

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

FILED

JUL 11 2002

SAMUEL L. KAY, CLERK
U. S. District & Bankruptcy Courts
Southern District of West Virginia

PENNY KENNEDY, RAYMOND
KENNEDY, individually
and as the legal guardians
and natural parents of
TREVOR KENNEDY,

Plaintiffs,

v.

CIVIL ACTION NO. 2:02-0906

COMMUNITY HEALTH FOUNDATION OF
MAN, WEST VIRGINIA, INC., et al.,

Defendants.

UNITED STATES MOTION TO STAY ORDER AND NOTICE

COMES NOW the United States of America (United States), by counsel, and hereby moves the court for the entry of an Order staying the Order and Notice entered on July 10, 2002.

In support of its motion, the United States says:

Pending before the court are a Motion to Substitute the United States in place of Community Health Foundation of Man, West Virginia, Inc. and Plaridel Tordilla, M.D. and a Motion to Dismiss for Want of Subject Matter Jurisdiction based on the fact that the six month administrative review of plaintiff's May 29, 2002, administrative tort claim has not yet expired. 28 U.S.C. §§ 2671-2680. As stated in the motion, the court has no subject matter jurisdiction until the statutory six months has

expired and may not hold this action in abeyance until the six months has expired.

Until the court's jurisdiction is resolved by these motions, it will be more cost effective and efficient for the court and the litigants to stay the Order and Notice. If the United States' motions are granted, then the United States will be dismissed without prejudice and unless there is some other basis for federal jurisdiction, the remaining parties will be remanded to state court.

Accordingly, the United States represents that based on the foregoing, there is good cause to stay the Order and Notice pending resolution of the motions filed by the United States.

Respectfully submitted,

KASEY WARNER
United States Attorney

By: 

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CERTIFICATE OF SERVICE

I, STEPHEN M. HORN, Assistant United States Attorney for the Southern District of West Virginia, hereby certifies that service of the **UNITED STATES MOTION TO STAY ORDER AND NOTICE** was made this 11th day of July, 2002 by mailing a true copy through the United States mail, postage prepaid, to the following:

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